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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

MOBILEMEDIA CORPORATION

Applicant for Authorizations  
and Licenses of Certain Stations  
in Various Services

WT Docket No. 97-115

To: The Commission

ERRATA

Triad Cellular Corporation respectfully submits this errata to correct certain typographical errors and to make corrective editorial changes to the "Petition For Partial Reconsideration" filed on July 7, 1997. Redlined copies of the corrected pages are attached, along with a complete version of the pleading, including a newly inserted Table of Contents.

Kindly refer any questions in connection with this filing to the undersigned.

Respectfully submitted,

TRIAD CELLULAR CORPORATION

By:

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July 9, 1997

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**CORRECTED PAGES  
BLACKLINED TO SHOW CHANGES**

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PETITION FOR PARTIAL RECONSIDERATION

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July 7, 1997

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### SUMMARY

Triad Cellular Corporation ("Triad") is seeking limited reconsideration of the portion of the Stay Order in the MobileMedia revocation proceeding which put a freeze on the processing of all applications in which officers, directors or shareholders of MobileMedia have attributable interests.

Triad has no common officers, directors or shareholders with MobileMedia, but is in the process of seeking Commission consent to the assignment of all of its cellular facilities to Western Wireless Corporation ("Western"). Western is not under common control with MobileMedia, but does have ~~an~~ a non-controlling attributable investor ("Hellman & Friedman") which also holds a significant stake in MobileMedia. The broad freeze imposed in the Stay Order has the detrimental effect of putting the publicly beneficial Triad/Western consolidation on hold.

The Commission long has recognized the importance of processing assignment and transfer applications promptly to reduce the potentially negative competitive consequences of having a station be "in play" for an extended period of time. Here that policy can be followed, and the Triad/Western assignment can be processed immediately, without prejudicing in any way the Commission's enforcement authority.

Commission precedent also establishes that wrongdoing involving one set of stations should only impact other "uninvolved" stations if there is a substantial likelihood that the misconduct will be repeated. Here, there is absolutely no basis to find that the conduct at issue in the MobileMedia case is likely to reoccur by virtue of Hellman & Friedman's non-controlling interest in Western. In fact, there has been no preliminary or final determination that Hellman & Friedman was actively or knowingly involved in the MobileMedia misconduct. Furthermore, the Commission is barred from extending the consequences of the freeze to Western's applications since neither Western nor its licenses were designated for hearing in the MobileMedia case.

On balance, the public interest is served by modifying or limiting the Stay Order so that it does not delay the prompt consideration and grant of the Triad/Western assignments.

## I. Background

1. On October 15, ~~1997~~ 1996, MobileMedia Corporation ("MobileMedia"), a publicly-held paging company with the second largest number of units in service in the United States, voluntarily reported to the Commission the results of the company's internal investigation of serious licensing irregularities regarding the company's operations. The report disclosed a large number of filings by MobileMedia with the Commission falsely certifying the completion of construction of facilities that were not in fact in service.<sup>2/</sup> The Commission cancelled all of the authorizations and applications which were improperly certified<sup>3/</sup> Thereafter, the Commission issued an Order to Show Cause, Hearing Designation Order, and Notice of Opportunity For Hearing For Forfeiture, FCC 97-124, released April 8, 1997 (the "Show Cause Order"), initiating a hearing in which the licensee qualifications of MobileMedia were placed in issue. All of the licenses of MobileMedia and its commonly-controlled subsidiaries were listed as being

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<sup>2/</sup> The false certificates were exacerbated by the fact that the company used non-existent facilities as the basis for so-called "40 mile" expansion applications (i.e. new sites which could only be established under the Commission's rules within 40 miles of a constructed and operating site.)

<sup>3/</sup> Public Notice, DA 97-78, released January 13, 1997. In all, more than 250 MobileMedia authorizations were cancelled and nearly 100 40-mile rule applications were dismissed.

we instruct Commission staff in all Bureaus and Offices that any radio applications in which . . . former or current officers, directors or senior managers [of MobileMedia] have attributable interests shall not be granted without resolution of [the] issue [as to whether such persons have engaged in wrongdoing] . . . [T]o the extent a Bureau or Office recommends that any application in which such individual holds an attributable interest should be granted, it shall refer the matter to the Commission for disposition.

3. Triad is an entrepreneurial company<sup>7/</sup> which owns and operates cellular radiotelephone properties in twelve Rural Service Areas ("RSAs") in the states of Minnesota, Oklahoma, Texas and Utah.<sup>8/</sup> The company serves in excess of ~~—[number of~~ 55,000 units~~—~~, many of which are in remote areas where wireline telephone services are unavailable.<sup>9/</sup> Triad has no officers, directors or shareholders in common with MobileMedia.

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<sup>7/</sup> The day-to-day operations of Triad are run by Barry Lewis, the President and a director of Triad. Mr. Lewis is a communications entrepreneur with substantial wireless operating experience. Mr. Lewis holds significant voting interests in Triad and, along with the other entrepreneurial members of the management team (Craig Viehwig, Chief Financial Officer, and Terry Purvis, Chief Engineer) holds a significant equity stake in Triad.

<sup>8/</sup> Two markets include the MN-7, MN-8 and MN-9, TX-1, TX-2, TX-4 and TX-5, OK-7 and OK-8 and UT-3, UT-4 and UT-6.

<sup>9/</sup> For example, Triad provides cellular service in remote portions of San Juan County in the Utah 6 RSA.

controlling institutional investor (Hellman & Friedman ~~Partner~~ **Capital Partners** II, L.P. and certain affiliated funds collectively referred to hereafter as "Hellman & Friedman") that holds voting control of MobileMedia. To the best of Triad's knowledge, Hellman & Friedman has not been identified as a result of the Commission's investigation as an active or knowing participant in the false MobileMedia certifications that were filed with the Commission.

## **II. Triad Should Be Accorded Standing**

6. Based upon the foregoing, Triad has a concrete adverse interest in the ruling in Paragraph 18 of the Stay Order, and should be accorded standing as an interested party to seek reconsideration of the breadth of the stay which was imposed by the Commission without notice to Triad. Absent relief, the practical effect of the stay will be to delay indefinitely Commission action upon the Triad/Western assignment. This will not only cause economic harm to Triad, but also will harm the public by leaving the Triad stations "in transition" for an extended period of time. As is discussed in detail within, the wireless business is in a very dynamic phase, and it does not suit the competitive demands of the marketplace for stations to be on hold indefinitely.

**CORRECTED VERSION OF PLEADING**

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**VERSION**

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July 7, 1997

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### SUMMARY

Triad Cellular Corporation ("Triad") is seeking limited reconsideration of the portion of the Stay Order in the MobileMedia revocation proceeding which put a freeze on the processing of all applications in which officers, directors or shareholders of MobileMedia have attributable interests.

Triad has no common officers, directors or shareholders with MobileMedia, but is in the process of seeking Commission consent to the assignment of all of its cellular facilities to Western Wireless Corporation ("Western"). Western is not under common control with MobileMedia, but does have a non-controlling attributable investor ("Hellman & Friedman") which also holds a significant stake in MobileMedia. The broad freeze imposed in the Stay Order has the detrimental effect of putting the publicly beneficial Triad/Western consolidation on hold.

The Commission long has recognized the importance of processing assignment and transfer applications promptly to reduce the potentially negative competitive consequences of having a station be "in play" for an extended period of time. Here that policy can be followed, and the Triad/Western

assignment can be processed immediately, without prejudicing in any way the Commission's enforcement authority.

Commission precedent also establishes that wrongdoing involving one set of stations should only impact other "uninvolved" stations if there is a substantial likelihood that the misconduct will be repeated. Here, there is absolutely no basis to find that the conduct at issue in the MobileMedia case is likely to reoccur by virtue of Hellman & Friedman's non-controlling interest in Western. In fact, there has been no preliminary or final determination that Hellman & Friedman was actively or knowingly involved in the MobileMedia misconduct. Furthermore, the Commission is barred from extending the consequences of the freeze to Western's applications since neither Western nor its licenses were designated for hearing in the MobileMedia case.

On balance, the public interest is served by modifying or limiting the Stay Order so that it does not delay the prompt consideration and grant of the Triad/Western assignments.

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To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION**

Triad Cellular Corporation, on its own behalf and on behalf of its various affiliates (collectively, "Triad")<sup>1/</sup>, hereby petitions the Commission to reconsider in part the recent Order in MobileMedia Corporation, FCC 97-197, released June 6, 1997 (the "Stay Order"). Specifically, Triad asks the Commission to narrow the scope of Paragraph 18 of the Stay Order so that it will not have the result of freezing or delaying the processing of the pending applications seeking consent to the assignment to Western Wireless Corporation ("Western") of Triad's cellular radiotelephone and related microwave stations. The following is respectfully shown:

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<sup>1/</sup> Triad's licensee affiliates are: Triad Minnesota, L.P., Triad Oklahoma, L.P., Triad Cellular, L.P., Triad Texas, L.P. and Triad Utah, L.P.

## I. Background

1. On October 15, 1996, MobileMedia Corporation ("MobileMedia"), a publicly-held paging company with the second largest number of units in service in the United States, voluntarily reported to the Commission the results of the company's internal investigation of serious licensing irregularities regarding the company's operations. The report disclosed a large number of filings by MobileMedia with the Commission falsely certifying the completion of construction of facilities that were not in fact in service.<sup>2/</sup> The Commission cancelled all of the authorizations and applications which were improperly certified<sup>3/</sup> Thereafter, the Commission issued an Order to Show Cause, Hearing Designation Order, and Notice of Opportunity For Hearing For Forfeiture, FCC 97-124, released April 8, 1997 (the "Show Cause Order"), initiating a hearing in which the licensee qualifications of MobileMedia were placed in issue. All of the licenses of MobileMedia and its commonly-controlled subsidiaries were listed as being

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<sup>2/</sup> The false certificates were exacerbated by the fact that the company used non-existent facilities as the basis for so-called "40 mile" expansion applications (i.e. new sites which could only be established under the Commission's rules within 40 miles of a constructed and operating site.)

<sup>3/</sup> Public Notice, DA 97-78, released January 13, 1997. In all, more than 250 MobileMedia authorizations were cancelled and nearly 100 40-mile rule applications were dismissed.

subject to the Show Cause Order, but no licenses of any other carrier were placed in issue.<sup>4/</sup>

2. MobileMedia is now in bankruptcy and requested of the Commission that the hearing proceeding be stayed pending a reorganization and a "Second Thursday"<sup>5/</sup> showing that the public interest would be served by allowing the revocation proceeding to be terminated and the licenses in question to be assigned to an uninvolved third party in order to protect innocent creditors, and the interest of the public in continuity of service. The Commission granted the requested relief in the Stay Order, but placed certain conditions on the relief. For example, the Commission conditioned the stay on MobileMedia's representation that no MobileMedia stock, which had plummeted in value and had been delisted from the NASDAQ National Market, owned by officers and directors would be transferred or sold during the pendency of the stay.<sup>6/</sup> Additionally, the Commission ruled, in Paragraph 18 of the Stay Order which is the subject of this petition for partial reconsideration, that:

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4/ As is discussed in greater detail within, no application of Western or of Triad was included in the Show Cause Order.

5/ See Second Thursday Corp., 22 FCC 26 515, recon. granted, 25 FCC 2d, 112 (1970).

6/ Stay Order, Para. 17

we instruct Commission staff in all Bureaus and Offices that any radio applications in which . . . former or current officers, directors or senior managers [of MobileMedia] have attributable interests shall not be granted without resolution of [the] issue [as to whether such persons have engaged in wrongdoing] . . . [T]o the extent a Bureau or Office recommends that any application in which such individual holds an attributable interest should be granted, it shall refer the matter to the Commission for disposition.

3. Triad is an entrepreneurial company<sup>7/</sup> which owns and operates cellular radiotelephone properties in twelve Rural Service Areas ("RSAs") in the states of Minnesota, Oklahoma, Texas and Utah.<sup>8/</sup> The company serves in excess of 55,000 units, many of which are in remote areas where wireline telephone services are unavailable.<sup>9/</sup> Triad has no officers, directors or shareholders in common with MobileMedia.

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<sup>7/</sup> The day-to-day operations of Triad are run by Barry Lewis, the President and a director of Triad. Mr. Lewis is a communications entrepreneur with substantial wireless operating experience. Mr. Lewis holds significant voting interests in Triad and, along with the other entrepreneurial members of the management team (Craig Viehwig, Chief Financial Officer, and Terry Purvis, Chief Engineer) holds a significant equity stake in Triad.

<sup>8/</sup> Two markets include the MN-7, MN-8 and MN-9, TX-1, TX-2, TX-4 and TX-5, OK-7 and OK-8 and UT-3, UT-4 and UT-6.

<sup>9/</sup> For example, Triad provides cellular service in remote portions of San Juan County in the Utah 6 RSA.

4. Triad competes in its markets with certain larger companies which have been able to consolidate cellular properties that cover larger contiguous geographic areas than those of Triad. Triad also now faces competition from PCS licensees whose areas of authorization encompass large Basic Trading Areas ("BTAs") or Major Trading Areas ("MTAs"). In part because of this competitive environment, Triad entered into an agreement to sell its cellular and related microwave facilities to Western, which was a natural buyer of the Triad properties because it operates in many contiguous geographic areas. The resulting assignment of license applications have been accepted for filing by the Commission<sup>10/</sup> and are awaiting Commission action. The public interest will be served by the proposed consolidation.

5. Shortly after the release of the Stay Order, Triad was notified by Western that the Commission was interpreting Paragraph 18 of the Stay Order as placing a de facto freeze on the processing of any and all Western applications, **including the Triad assignments**. While Western is not controlled by MobileMedia, or by any officer, director or shareholder of MobileMedia, it does have a non-

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<sup>10/</sup> See, e.g., Public Notice, Report No. LB-97-36 released May 30, 1997, listing applications 02549-CL-TC-97 through 02561-CL-AL-97.

controlling institutional investor (Hellman & Friedman Capital Partners II, L.P. and certain affiliated funds collectively referred to hereafter as "Hellman & Friedman") that holds voting control of MobileMedia. To the best of Triad's knowledge, Hellman & Friedman has not been identified as a result of the Commission's investigation as an active or knowing participant in the false MobileMedia certifications that were filed with the Commission.

## **II. Triad Should Be Accorded Standing**

6. Based upon the foregoing, Triad has a concrete adverse interest in the ruling in Paragraph 18 of the Stay Order, and should be accorded standing as an interested party to seek reconsideration of the breadth of the stay which was imposed by the Commission without notice to Triad. Absent relief, the practical effect of the stay will be to delay indefinitely Commission action upon the Triad/Western assignment. This will not only cause economic harm to Triad, but also will harm the public by leaving the Triad stations "in transition" for an extended period of time. As is discussed in detail within, the wireless business is in a very dynamic phase, and it does not suit the competitive demands of the marketplace for stations to be on hold indefinitely.

7. Triad's petition in this ancillary aspect of the MobileMedia proceeding for the limited purpose of seeking relief from the adverse impact of the stay on the Triad/Western agreement transaction should be considered timely. The Triad/Western transaction was signed prior to any indication that the MobileMedia revocation proceeding inhibited Western's ability to process cellular applications. It was not until Triad was advised that the Commission interpreted Paragraph 18 of the Stay Order as imposing a freeze on any and all Western applications that Triad had a cognizable interest in the MobileMedia proceeding. This petition is filed within the time period for seeking reconsideration of the Stay Order. Thus, Triad should be deemed to have raised the matters herein at its first opportunity to do so.

8. The fact that requests for reconsideration of interlocutory orders in hearing proceedings are not usually entertained should not act as a bar to the relief Triad is seeking. Since Triad is not -- and had no reason to be -- a party to the MobileMedia hearing<sup>11/</sup>, it had no opportunity to participate in the proceedings that preceded the

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<sup>11/</sup> Triad understands that the General Counsel's office has indicated that it will entertain requests for reconsideration to the Stay Order by non-parties who are adversely affected. If this is incorrect, Triad respectfully seeks party status, for good cause shown.

imposition of the stay, and no notice of the scope of the freeze that was ultimately imposed. Fundamental fairness requires that Triad be given an opportunity to be heard. Under these circumstances, immediate reconsideration of the Stay Order is fully justified.

### **III. Acquisitions Should Be Exempted From the Freeze**

9. Triad endorses the position taken by Western in its "Emergency Petition For Limited Reconsideration or Clarification" filed July 3, 1997 that the Commission should modify paragraph 18 of the Stay Order or clarify that it does not apply to Western. The grounds for removing Western from the ambit of the stay are particularly compelling with respect to the Triad/Western assignment applications. As the Commission has recognized in a variety of contexts, assignment applications present unique public interest issues that merit special consideration.

10. The acceptance for filing of an assignment or transfer of control application gives notice to every competitor in the marketplace that the station to be assigned or transferred is in transition. Attempts to raid customers and personnel during these transition periods are commonplace because a station whose ownership is "in play" is considered vulnerable. Stations operating under a contract of sale also can be slower to react to changes in

the competitive marketplace because most purchase and sale agreements contemplate that the subject station will continue to be operated in the "ordinary course of business".<sup>12/</sup> Given these real world considerations, there are valid public interest reasons for the Commission to expedite its consideration of assignment and transfer applications.

11. A review of relevant Commission rulings confirms its consistent commitment to processing assignment and transfer applications on an expedited timetable. The agency has long had a separate, accelerated processing line for applications involving ownership changes.<sup>13/</sup> And, many decisions specifically note that the public interest is not served when applications for assignment or transfer are not acted upon promptly. For example, in the leading case of

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<sup>12/</sup> Triad does not mean to suggest that its commitment to public service has waned, or that it has in any fashion relinquished control of its stations to Western. Triad merely is alluding to the practical realities, which have previously been acknowledged by the Commission, when a station is under contract.

<sup>13/</sup> For example, the Wireless Bureau recently released a public notice announcing the internal processing guidelines it was using to expedite action upon assignments and transfers. Public Notice, DA 95-2559, released October 13, 1995. The result is that such applications routinely are processed more quickly than new or modified facility applications.

Grayson Enterprises, 79 FCC 2d 936 (1980), the Commission observed:

Deferral of an assignment application can have an adverse impact on the community in which a station is located. By filing an assignment application, the [licensee] has announced to its employees and the public that it no longer wants to operate the station. A deferral of that assignment ... may result in the deterioration of service to the community. The licensee will probably be reluctant to invest any new resources or effort in improving service after it has negotiated a deal with the buyer. The performance of employees at the station to be sold may also be impaired if they are asked to work for a considerable time under an employer who has announced its intention to leave the station...

Id. at para. 8. Based upon this analysis, the Commission ruled in Grayson that, in reviewing assignments involving parties to a revocation proceeding, the Commission must balance its general long term interest in deterrence of wrongdoing with the immediate interest in getting licenses of operating stations promptly into the hands of those who are in a position to operate the station in the public interest on a long term basis. Id. at para 9. Accord Cellular System One of Tulsa, 102 FCC 86 (1985) (Commission must balance the public interest considerations favoring the free transferability of licenses against the long term interest in deterrence.)

12. In light of these considerations, the Commission should **at the very least** exempt from the stay any and all acquisitions of facilities by Western. Under the circumstances at hand, the public interest benefit in having assignment applications processed promptly exceeds any deterrent benefit of having all applications to which MobileMedia principals are parties placed on hold. Indeed, since no one from MobileMedia is in a position of control or involved in the day-to-day operations of Western and/or Triad, there is no demonstrated need for deterrence with regard to the Western operations or the Western/Triad assignment, which clearly tips the scale in favor of allowing the Triad licenses to be assigned without undue delay.

**IV. The Scope of the Freeze is Contrary to Precedent**

13. The question of whether misconduct by a licensee in connection with certain licensed stations will be ruled to adversely affect other "uninvolved" stations has been faced by the Commission many times, and a considerable body of law has developed on the subject. The leading case is Grayson, in which the Commission held:

the basic issue is will be whether there is a **substantial likelihood** that the allegations warranting designation for hearing bear upon the operations of the other stations. If, after considering all of the particular facts and